

MINUTES OF THE ZONING BOARD 11-1-12

Members Present: Daniel O'Shea, Amy Bertini, Robert Lieber, Al Socha.

Absent: Kay Vossler.

Also present: Tom Niederhofer, Frank Sarat, Doug Laubach and Susan Poet.

The meeting was called to order at 7:30 P.M. Dan O'Shea asked what transpired at the special meeting of October 17, 2012. Amy Bertini stated that it was discussed that the combined lots still did not meet one acre and that the exception contained in Section 645 regarding prior non-conforming lots, did not apply. Bob Lieber stated that all issues except the lot size had been mitigated by the applicant. Discussion ensued about prior applications that had been turned down, including one near Song Mountain by the present applicant, due to the lot being less than 2 acres. Further discussion was had regarding the 2008 updated ordinance and Dan O'Shea said the lots in question were not buildable even before the 2008 update as the 2 acre minimum already existed. The previous ordinance had no grandfathering provision. Frank Sarat, the applicant's attorney, questioned this and Dan O'Shea explained that the lot(s) never conformed. Mr. Sarat had spoken to Patrick Snyder who had given the Board a legal opinion on the issue and advised Mr. Sarat that his opinion did not go against the applicant. Dan O'Shea said that he just left it up to the Board to decide and that he agreed that Section 645 (J) (1) did not apply. Dan O'Shea further stated that the purpose of the 2008 amendment was to preserve for a limited time the buildability of a lot however, in this case there was nothing to preserve. Mr. Sarat asked to see a copy of the e-mail legal opinion of Patrick Snyder and that was offered as part of the record.

Susan Poet asked the Board to take into account other factors and the fact that the construction of the home will improve the lot. Dan O'Shea stated the purpose of the R1L (2) acre lot was due to problems with septic breaching the lake and was not an arbitrary decision. Mr. Sarat asked if the Board could get a more clear opinion from Patrick Snyder. Dan O'Shea said it was time for the Board to make its decision now and that it was the Board's understanding that the applicant was anxious to resolve the issue. Mr. Neiderhofer expressed frustration that he had been advised by the code enforcement officer that this should be a routine application and would be approved. Mr. Neiderhofer went ahead with the purchase of the property expecting approval. The building will improve the property and the land is useless otherwise. Mr. Sarat asked if the Board renders a negative decision, is it reversible. Amy Bertini stated that their only recourse would be an Article 78 proceeding. Doug Laubach stated that the lot size was 1.8 acres, and had been approved by the Health Department. He further stated his desire to leave as light a footprint as possible and stated if not utilized as a residential building lot, what would it be good for. He was corrected that the lot size was actually just short of 1 acre.

Bob Lieber brought a book concerning the Town's land use goals which were utilized in developing the revised 2008 ordinance. The proposed building lot is not in a flood zone and is not in the wetlands area. Also, the proposed building meets all setback requirements. Again, the only issue is the lot size. Al Socha stated his concern that if the application is approved, it will open up the Board to

problems down the road and could be setting a bad precedent for future applications. He spoke to a proposed subdivision pending on Song Lake Road.

The Board then proceeded to its impact assessment as the lead agency, and found no negative or adverse impacts concerning the variance request. Motion made by Amy Bertini, seconded by Bob Lieber, that there be a negative declaration, all in favor, the motion carried. The Board then made the following findings in reviewing the criteria for the grant of a variance concerning the Tom Niederhofer application:

1. That the development will improve the character of the neighborhood; 2. Whether the benefit sought by the applicant can be achieved by some other method: No, as the lot is as big as it can be made and is the combination of 2 lots. 3. Is the area variance substantial: Yes, it does not meet the size requirement. Any variance will be contingent on the applicant meeting the requirements outlined in a letter from the Cortland County Health Department dated 8-8-12. All set backs are met and drainage is provided by existing culverts. 4. Will the proposed variance have an adverse effect on conditions in the neighborhood: No, although there is always the potential for adverse environmental impacts, the Health Department conditions should mitigate the issues. 5. The alleged difficulty was not self-created and the applicant cannot make the lot bigger. It was therefore Resolved:

Whereas, the proposed variance will not cause a detriment to the neighborhood as it is limited to a single family year round home that will add character to the neighborhood; and Whereas, the proposed project is planned to use 2 existing lots that are combined to 1 and still cannot be enlarged enough to meet the 2 acre lot size, and will improve the neighborhood; and Whereas, while the proposed variance is substantial there is no other practical means to achieve the applicant's goal and there is no other potential use for this property; and Whereas, the County Planning and County Health Departments have reviewed this application as noted in their letters to the Board; and Wherefore, the variance be **granted** based on the criteria noted above and in accordance with the land use plan adopted by the Town, with the exception of the lot size, contingent upon the applicant meeting the Health Department requirement stated in its letter dated August 8, 2012.

Motion made by Amy Bertini, seconded by Bob Lieber that the variance be approved based on the Board's review of the criteria, all in favor, the motion carried and the variance is granted.

OLD BUSINESS: Motion to approve the minutes of December 1, 2011, made by Bob Lieber, seconded by Amy Bertini, all in favor, (Al Socha abstained) the motion carried. Motion to approve the minutes of October 4, 2012 with corrections noted, made by Bob Lieber, seconded by Amy Bertini, all in favor, the motion carried. Motion to approve the minutes of October 17, 2012, made by Al Socha, seconded by Amy Bertini, all in favor, the motion carried. Motion to adjourn made by Bob Lieber, seconded by Al Socha, all in favor, the motion carried and the meeting adjourned at 9:20 PM.

Respectfully submitted,

Mary Anne McCloskey, Secretary